

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE SHEET METAL
WORKERS' LOCAL UNION NO. 28
FUNDS AND PLAN, et al,

Plaintiffs,

-against-

FIVE STAR KITCHEN
INSTALLATIONS, INC.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/17/2020

18cv09905 (GBD) (DF)

**SCHEDULING ORDER
FOR A DAMAGES INQUEST**

DEBRA FREEMAN, United States Magistrate Judge:

On January 6, 2020, the Honorable George B. Daniels, U.S.D.J., referred this case to this Court for the purpose of conducting an inquest with respect to the amount of damages that should be awarded to Plaintiffs upon the default of Defendant. (*See* Dkt. 40.). Accordingly, it is hereby ORDERED that:

1. Plaintiffs shall serve on Defendant and file (with a courtesy copy to my Chambers) Proposed Findings of Fact and Conclusions of Law concerning damages no later than February 18, 2020. Plaintiff shall include, with such service, a copy of this Order.

2. Plaintiffs' Proposed Findings should specifically tie their proposed damages figure(s) to the legal claim(s) on which liability has now been established; should demonstrate how Plaintiffs arrived at the proposed damages figure(s); and should be supported by a sworn affidavit, or a declaration under penalty of perjury, that attaches as exhibits and contains an explanation of any documentary evidence that helps establish the proposed damages.

3. Defendant shall submit a response, if any, to Plaintiffs' submission no later than March 19, 2020: Defendant is cautioned that, as a corporate entity, Defendant may not appear in this Court without an attorney. For this reason, any responses to Plaintiffs' submission that

Defendant may wish to file, including any request for a hearing on damages, must be made through counsel, in order for that response to be considered by the Court.

4. IF DEFENDANT FAILS TO RESPOND TO PLAINTIFFS' SUBMISSION BY MARCH 19, 2020, THEN THIS COURT WILL PROCEED TO ISSUE A REPORT AND RECOMMENDATION CONCERNING DAMAGES ON THE BASIS OF PLAINTIFF'S WRITTEN SUBMISSION ALONE. FURTHER, THIS COURT WILL NOT HOLD A HEARING ON DAMAGES, UNLESS DEFENDANTS REQUEST A HEARING, IN WRITING, BY MARCH 19, 2020. *See Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991) (Fed. R. Civ. P. 55(b)(2) "allows but does not require . . . a hearing"); *Fustok v. ContiCommodity Servs. Inc.*, 873 F.2d 38, 40 (2d Cir. 1989) ("[I]t [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment.").

Dated: New York, New York
January 17, 2020

SO ORDERED



DEBRA FREEMAN
United States District Judge

Copies to:

Plaintiffs (Via ECF)

Five Star Kitchen Installations, Inc.
517B Acorn Street
Deer Park, NY 11729